IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 241 of 2006

The Kapol Co-op Bank Ltd. .. Petitioner

versus

B. Anuj Enterprises(I) and ors. .. Respondents

WITH

ARBITRATION PETITION NO. 241 of 2006

The Kapol Co-op Bank Ltd. .. Petitioner

versus

M/s.A.B Corporation (I) & ors. .. Respondents

...

Mr.K.M.Sangani for the petitioner

Mr. S.F. Rego i/b N.J. D'Monte for the respondents

CORAM : D.G. KARNIK,J.

DATED : 11th January 2007.

P.C.:

1. These two Arbitration Petitions under section 34 of the Arbitration and Conciliation Act, 1996 (for short "Arbitration Act") are directed against the common award dated 7th October 2005 passed in two references. Since the award is common, both these applications are heard together and disposed of by this common judgement.

2. Respondent no.1. M/s.B. Anuj Enterprises in Arbitration Petition no.241 of 2006 and the respondent no.1 M/s.A.B. Corporation in Arbitration Petition no.242 of 2006 are sister concerns. They have two more sister concerns by name M/s.B. Anuj Enterprises and M/s.National Steel Corporation. The said four concerns had borrowed money from the petitioner bank. On account of the default in payment, the petitioner bank initiated four arbitration proceedings for recovery of the money due. The claim against the respondent no.1 in Arbitration Petition no.241 of 2006 M/s.B. Anuj Enterprises was Rs.18,39,042/- and claim against M/s.A.B. Corporation, respondent in Arbitration

Petition no.242 of 2006 was Rs.18,33,057/-. The claims in other two cases against the other two sister concerns were Rs.6,83,247/- and Rs.4,16,727/- thus making a total claim of Rs.47,72,071/- plus interest and costs. Respondent nos.2 to 7 in all the four arbitration petitions were the common guarantors for the said four loans.

3. Negotiations were held between the petitioner bank and the respondents regarding the overall settlement of all the four loan outstandings. By a letter dated 19th April 2005 written by M/s.National Steel Corporation, respondents offered to pay to the petitioner bank a sum of Rs.64,50,000/- in full and final settlement of all the four loan accounts. In pursuance of the said offer, the respondents paid a sum of Rs.64,50,000/- and the petitioner bank has admitted the receipt thereof. According to the respondents in view of the settlement no further sum is due. According to the petitioner bank, the amount of Rs.64,50,000/- has not been accepted in full and final settlement of all the claims and therefore, it is entitled to an award as prayed.

4. In view of the payment of Rs.64,50,000/- y the respondents, the petitioner bank withdrew the two cases against the other two borrowers but continued the arbitration proceedings against the respondents in the present petitions. By the common award dated 7th October 2005, the learned Arbitrator dismissed both the claims. That award is impugned in these two petitions.

5. Learned counsel for the respondent submitted that the Arbitration Petitions are barred by limitation and therefore they are liable to be dismissed. Sub-section (3) of section 34 of the Arbitration Act lays down that an application for setting aside an award may not be made after three months have elapsed on the date of the party making an application had received the arbitral award. Proviso to sub-section (3) enables the Court to condone the delay not exceeding 30 days if the court is satisfied that there was sufficient cause for making the application beyond the period of three months. Thus under sub-section (3) the periods of limitation for making of an application under section 34 for setting aside the award is three months. The delay upto 30 days can be condoned in the event

sufficient cause is shown for the condonation.

6. The award in the present case was passed on 7th October 2005. Both the applications for setting aside are made on 20th February 2006 i.e. beyond the period of limitation of three months prescribed under sub-section 3 of the Arbitration Act.

7. Initially in paragraph no.16 of the application, the petitioner contended that it received the copy of the award on 31st December 2005 and therefore the applications were within limitations. However on the rejoinder being filed by the respondents alleging that the copy was received by the parties on 21st October 2005, the petitioner filed affidavit in reply sworn in by Shashikant G. Gondhali in each of the petitions. In the said affidavit in reply, the petitioner has admitted that the copies of the award was received on 21st October 2005 and the date of 31st December 2005 mentioned in paragraph no.16 of the petition was a typographical error. In view of the clear admission that the award was received by the petitioner on 21st December 2005, application for setting aside the award could have been filed within three months of 21st October 2005

i.e. on or before 20th February 2005. The present applications which have been filed on 20th February 2006 are thus clearly barred by limitation. Affidavit in rejoinder does not give any sufficient grounds for condonation of the delay in making of the application. The applications are therefore liable to be dismissed on this ground alone.

8. Even on merits, I find that the view taken by the learned Arbitrator is a possible view of facts. It is not disputed that there were talks of settlement between the parties. It is also not disputed that the respondents had offered to pay a sum of Rs.64,50,000/- in full and final settlement of all the claims. It is also not disputed that the respondents did pay a sum of Rs.64,50,000/- to the petitioner and the petitioner bank has received the said payment. The learned Arbitrator after taking into consideration the evidence of the parties have come to the conclusion that there was an agreement between the parties that the petitioner bank can accept the sum of Rs.64,50,000/- in full and final settlement of all the claims and that the amount was paid in pursuance of the said agreement by the respondents. This is a pure finding of fact which is

not in any way perverse. Such a finding of fact has not been for challenge in a petition under section 34 of the Arbitration Act. In my view, there is no merit in the petitions.

9. Learned counsel for the petitioner referred to an unreported decision of this Court in Cosmos Co-operative Bank Ltd. Vs. A.C. Enterprises and ors (Arbitration Petition no.463/04 with Arbitration Petition no.464/04) decided on 20th September 2005 (Coram D.K. Deshmukh, J) Relying upon certain observations of the said decision, counsel submitted that the arbitrator had no power to compel a bank and accept the settlement. He therefore submitted that the decision of the arbitrator compelling the bank to accept the settlement is erroneous in law. What the arbitrator has done has not compelled the bank to accept the settlement but has held that there was a settlement in fact between the parties and the sum of Rs.64,50,000/- was paid by the respondents in pursuance of the settlement. The arbitrator has thus not compelled the parties to accept any settlement but has held that the parties were bound by the settlement which was already reached between them.

The decision therefore does not help the petitioner at all.

10. For these reasons, there is no merit in the petitions which are hereby dismissed.

D.G. KARNIK, J